

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION)
FOR APPROVAL TO PURCHASE THE FIXED) CASE NO. 2007-00374
ASSETS OF THE MONTICELLO ELECTRIC)
PLANT BOARD, MONTICELLO, KY)

O R D E R

On November 8, 2007, South Kentucky Rural Electric Cooperative Corporation (“South Kentucky”) filed two pleadings: (1) Objection to the Filing of Documentary Evidence; and (2) Objections to the Attorney General’s Motions to Intervene and to Amend Procedural Schedule, combined with a Motion for Protective Order. On November 9, 2007, the Attorney General (“AG”) filed a response objecting to South Kentucky’s motion for a protective order to relieve South Kentucky from having to respond to the AG’s data request. In addition to his objection, the AG requests in the alternative that South Kentucky’s application be denied.¹

With respect to the first pleading, South Kentucky sought to have certain documents relating to the sale of assets by the Monticello Electric Plant Board to South Kentucky purportedly provided by the Municipal Electric Power Association of Kentucky (“MEPAK”) stricken from the record. Those documents were sent to the Commission on

¹ On November 16, 2007, South Kentucky filed a Response to Attorney General’s Motion to Dismiss Application and advised that the AG has waived the motion to disapprove the application in light of the recent Commission ruling granting the AG’s request to intervene and granting the AG’s motion to amend the procedural schedule to authorize additional discovery.

an *ex parte* basis. Due to their substantive nature, they were included in the record of this case. South Kentucky argues that MEPAK has no standing to participate in this action because it is not a party and has not sought to intervene. South Kentucky further argues that there is no regulation or statutory provision which authorizes these documents to be placed in the record by a non-party.

The Commission disagrees. KRS 278.310 provides that the Commission “shall not be bound by the technical rules of legal evidence” when conducting hearings and investigations. The fact that documents are received from a non-party does not prohibit the Commission from entering those documents into the record, particularly when they are substantive in nature. The parties to a case have a right to know when substantive documents have been received by the Commission on an *ex parte* basis. In addition, the Commission has historically placed written comments and documents into a pending case file when those documents have been sent to our office by a non-party.

As noted in the November 6, 2007 cover letter placing the documents into the record, due to the substantive nature of the documents, it was necessary to avoid any potential claim that the Commission had received information on an *ex parte* basis. Accordingly, the Commission will deny South Kentucky’s request to strike the documents from the record.

In its second pleading, South Kentucky objects to the AG’s request to intervene, arguing that the AG failed to timely seek intervention as required under 807 KAR 5:001, Section 3(8). South Kentucky also contends that the AG has no statutory right of intervention in a non-rate case. South Kentucky argues that KRS 367.150(8)(b) allows the AG to intervene as a real party in interest in rate cases, but that no such right exists

for other proceedings before the Commission. Rather, South Kentucky asserts that KRS 367.150(8)(a) controls in this instance. South Kentucky maintains that KRS 367.150(8)(a) allows the AG to appear before a regulatory body on behalf of consumers subject to a showing of a specific, valid reason authorizing the AG's intervention.

The Commission notes that the AG's motion to intervene was granted on November 8, 2007, the same day that South Kentucky's objections were filed. Consequently, the Commission will treat South Kentucky's objection as a request for reconsideration. Based on South Kentucky's request, the Commission finds that the AG's motion to intervene was filed on November 2, 2007. At that time, the procedural schedule for this case allowed for the filing of comments by November 15, 2007. Given that the time period for the filing of comments had not yet expired, the Commission finds the AG's motion to intervene to have been timely filed.

Contrary to South Kentucky's assertions, both KRS 367.150(8)(a) and (b) apply with equal force in granting the AG a statutory right of intervention in any proceeding

before the Commission. The clear and express language of KRS 367.150(8)² authorizes the AG to appear before any rate-making or regulatory body or agency to represent consumers' interests as well as to be made a real party in interest to any action involving a quasi-judicial proceeding of any state commission or rate-making body whenever deemed necessary and advisable by the Attorney General. KRS 367.150(8) does not limit the AG's intervention as a matter of right to only rate proceedings, nor does it require the AG to provide specific, valid reasons for his intervention in any proceeding before the Commission. Accordingly, the Commission will overrule South Kentucky's objections to the AG's intervention.

South Kentucky has also objected to the AG's request to amend the procedural schedule and has moved the Commission for a protective order. Since the Commission's November 9, 2007 Order has already found good cause to amend the procedural schedule to authorize additional discovery by the AG, and South Kentucky has already responded to the AG's discovery requests, the Commission finds South Kentucky's objection and motion to be moot.

² KRS 367.150(8) provides in full as follows:

- (a) To appear before any federal, state or local governmental branch, commission, department, rate-making or regulatory body or agency, to represent and be heard on behalf of consumers' interests; **and**
- (b) To be made a real party in interest to any action on behalf of consumer interests involving a quasijudicial or rate-making proceeding of any state or local government branch, commission, department, agency, or rate-making body whenever deemed necessary and advisable in the consumers' interest by the Attorney General.

(Emphasis added).

IT IS THEREFORE ORDERED that:

1. South Kentucky's Objection to the Filing of Documentary Evidence is overruled.

2. South Kentucky's Objection to the Attorney General's Motion to Intervene is overruled.

3. South Kentucky's Objections to the AG's Motion to Amend the Procedural Schedule and South Kentucky's Motion for Protective Order are overruled as moot.

Done at Frankfort, Kentucky, this 13th day of December, 2007.

By the Commission

ATTEST:



Executive Director